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**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]

DECISION

KIN/141616

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**PRELIMINARY RECITALS**

Pursuant to a petition filed June 12, 2012, under Wis. Stat. § 48.57(3m)(f), and Wis. Admin. Code § DCF 58.08(2)(b), to review a decision by the Perez-Pena Limited in regard to Kinship Care, a hearing was held on August 28, 2012, at Milwaukee, Wisconsin.

The issues for determination are (1) whether the Wisconsin Division of Hearings and Appeals has jurisdiction to consider Kinship Care overpayment determinations, and (2) whether the Petitioner was overpaid \$220 in Kinship Care benefits.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]

Respondent:

Department of Children and Families  
201 East Washington Avenue, Second Floor  
Madison, Wisconsin 53703-2866

By: Julie Bischoff of St. Aemilian-Lakeside, Inc. on behalf of  
Bureau of Milwaukee Child Welfare  
1555 Rivercenter Drive  
Milwaukee, WI 53212

**ADMINISTRATIVE LAW JUDGE:**

David D. Fleming  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a resident of Milwaukee County.
2. Petitioner was notified that she had been overissued kinship care payments in the amount of \$220.00 for the month of February 2012. No notice was available for the hearing so the date of notification is not known.

3. Petitioner was eligible for court-ordered kinship in February 2012.
4. A print out from the WISACWIS system for February 2012 shows a court ordered kinship care payment in the amount of \$220 as presented by outstanding check # M2020460; a long-term kinship care payment in the amount of \$220 on May 1st for February 2012 but which was canceled and an overpayment of court ordered kinship care in the amount of \$220.

### **DISCUSSION**

The Department of Children and Families is authorized by the Wisconsin Administrative Code to recoup overpayments under the Kinship Care program. Wisconsin Administrative Code Chapter DHS § 2.01 explains “[t]his chapter is promulgated...to establish procedures for the recovery of incorrectly paid benefits.” Wis. Admin. Code § 2.01. The Kinship Care program comes within the purview of the chapter because “benefits” are defined as payments under programs within Chapters 48 and 49 of the Wisconsin Statutes. See DHS § 2.03(3). The Kinship Care Program is authorized and set forth in Chapter 48. Though Chapter DHS 2 of the Administrative Code is specifically one relating to the Department of Health Services, the Department of Children and Families (“DCF”) is authorized to recoup under this chapter pursuant to the notes following DHS §§ 2.02 and 2.03 which both state: “[t]his chapter applies to Department of Health Services and Department of Children and Families programs until such time as each of the departments can adopt separate rules.” The Department of Children and Families, which administers the Kinship Care Program through county agencies, has not adopted separate rules relating to overpayments under the program. Therefore, overpayments under the Kinship Care Program may be recouped by DCF under Wis. Admin. Code Chapter DHS 2.

The agency has the burden of proof by a preponderance of the evidence to demonstrate that an overpayment has occurred.

Here the evidence is not sufficient to demonstrate that there was an overpayment of \$220 in kinship care benefits for the month of February 2012. The available records indicate there was payment made for February but that the check was still outstanding as of May. Regardless, Petitioner was eligible for that benefit in February. The long-term kinship care payment was canceled. The other notation on the WISACWIS printout simply indicates that there is a \$220 overpayment. The evidence is not sufficient to demonstrate that this is a separate payment or if it refers to the outstanding check as being an overpayment. I also note that the agencies involved in this also found the records confusing as demonstrated by emails (Ex #s 4 and 5). Finally, Petitioner was credible and testified that she was not receive double kinship care benefits in February 2012.

### **CONCLUSIONS OF LAW**

1. The Division of Hearings and Appeals does have jurisdiction to decide kinship care overpayment cases.
2. That the evidence in this case is not sufficient to demonstrate that Petitioner was overpaid kinship care payments in the amount of \$220 for February 2012.

**THEREFORE, it is**

### **ORDERED**

This matter is remanded to the department and agencies involved with instructions to take the steps necessary to rescind the alleged overpayment of \$220 in court ordered kinship care benefits for February 2012. This must be done within 10 days of the date of this decision.

### **REQUEST FOR A REHEARING**

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Children and Families. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 201 East Washington Avenue, Second Floor, Madison, Wisconsin 53703-2866. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

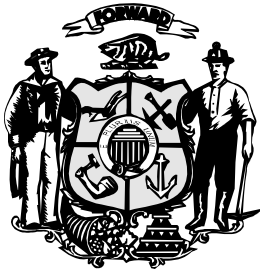
The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 2nd day of October, 2012

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David D. Fleming  
Administrative Law Judge  
Division of Hearings and Appeals

c:   Perez-Pena Limited - email  
      Department of Children and Families - email



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on October 2, 2012.

Perez-Pena Limited  
DCF - Kinship Care  
DCF - Kinship Care